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## PREPARATION FOR THE ENERGY ACT 2011 AND MINIMUM ENERGY EFFICIENCY STANDARDS IN UK COMMERCIAL PROPERTY

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**ABSTRACT.** Improving the energy performance of buildings has become a priority area for energy efficiency policy across the European Union. A cornerstone to achieving carbon reductions in UK buildings is the Energy Act 2011 and subsequent minimum energy efficiency standards. This Act contains a number of provisions which will have implications for the commercial property sector. The paper presents a quantitative study that investigates the implications of the legislation and assesses how key stakeholders, specifically commercial landlords and property agents, are preparing for its implementation. The results reveal there is generally a good awareness of the Act and suggest that a number of property owners, and to a lesser extent advisers, are taking greater account of energy and environmental performance in their acquisitive due diligence and asset management strategies, as a result of the Act. Less preparation was evident with regard to green leasing practice, although this was being considered as an action in the near future.

**KEYWORDS:** Energy Act 2011; Commercial property; Energy performance certificates; Minimum energy efficiency standards; Sustainability

**SUPPLEMENTARY MATERIAL** associated with this article can be found, in the online version, at <https://doi.org/10.3846/1648715X.2016.1249534>

### 1. INTRODUCTION

Global warming is now a significant and growing concern that governments around the world are seeking to address. The UK government's Climate Change Act 2008 set an ambitious and world first legally-binding target to reduce the UK's greenhouse gas emissions by 80% by 2050, from a 1990 baseline (UK Parliament 2008). The built environment accounts for almost 40% of UK carbon emissions; commercial buildings account for approximately 12% of such carbon emissions, with the remainder produced by domestic buildings (HM Government 2011b). Accordingly, the vast potential for making carbon reductions in the built environment is widely recognised and it has thus been targeted as a key area for change. However, the commercial property sector has traditionally been perceived as slow to respond to the sustainability agenda (Pivo, McNamara 2005; Cox, Cadman 2000). Accord-

ingly, intervention from governments and interest-groups to achieve higher level efficiency for the sector has increased significantly over the past decade (Chegut *et al.* 2011).

Across Europe, improving the energy performance of buildings has become a priority area for energy efficiency policy (Lown 2014). This is demonstrated by the introduction of European (EU) directives, such as the Energy Performance of Buildings Directive (EPBD) which requires countries to enhance their building regulations to introduce energy certification schemes. In 2010 the EPBD Recast also introduced a 2020 target obligation for all new buildings to be nearly zero energy buildings (European Parliament and Council of the European Union 2011).

While new buildings are increasingly designed to better sustainability design standards, buildings are existing ones and it is estimated that 70% of today's existing built stock will still be in use in 2050 (Stafford *et al.* 2011). Accord-

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means that retrofitting, along with better management, operation and use of the existing stock, will be paramount in achieving the required carbon reductions. Since roughly two-thirds of UK commercial property is leased to tenants (Property Industry Alliance 2013), attention needs to be paid to the way in which the landlord and tenant relationship functions (Hinnells *et al.* 2008). It is crucial that a better understanding is developed of, not only the technical possibilities of buildings, but also of the interplay between the content and structure of leases and the behaviour of the various players involved in letting and utilising the space (Roussac, Bright 2012). Concerns have been made in the past that the government has consistently failed to act with regard to the sustainable management and use of existing buildings (Sayce *et al.* 2007).

The rate of progress in tackling energy inefficiency in existing commercial stock is still considered too slow (Dixon *et al.* 2014). However, legislation that specifically catches the existing built stock is now in place in the UK as a result of requirements set out in the EPBD. At the forefront to achieving the UK's carbon reduction target in new and existing buildings is the Energy Act 2011 ("the Act"), which was granted Royal Assent in October 2011 (HM Government 2011a). The Act includes provision for energy efficiency regulations specifically targeted at rented properties in both the domestic and non-domestic sectors. The detail is set out in the Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015 (the "Regulations") which will make it unlawful for landlords to lease property below a minimum energy efficiency standards (MEES) until it has complied with the obligations to make relevant energy improvements (HM Government 2011a). The minimum energy rating required is set at an Energy Performance Certificate (EPC) rating of 'E', and will come into force by 1 April 2018 in England and Wales (DECC 2014). Accordingly, landlords will not be lawfully permitted to lease any property which has an EPC rating of F or G unless improvements are made or certain exemptions apply. This will initially only be applicable to new leases, including sub-letting, assignments and renewals under the Landlord and Tenant Act 1954. However, from 2023 the rules will also apply to existing commercial leases (DECC 2014). The principal exemption is that energy efficiency improvement works should be economically viable

required improvement works would pay for themselves, via predicted energy bill savings, on a simple seven year payback basis. Further exemptions include short leases of less than six months (there is no provision to renew or extend) and leases over 99 years. Furthermore, landlords do not have to carry out the improvements if the tenant's third party consent is required for the works and such consent has been refused or where the works would devalue the market value of the property by 5% (DECC 2014). Certain buildings are expected to be exempt from the regulations, such as listed buildings where their character would be unacceptably altered if improvements were made.

It has been suggested that 18% of UK commercial stock has EPC ratings of 'F' or 'G', and a further 20% are rated 'E' (GVA 2014). However, additional research warns that the number of compliant properties could increase if EPC ratings are updated to take into account changes that have been made to the calculation methodology in the last few years (Lown 2014). Consequently, energy efficiency should no longer be a minor consideration for commercial property owners and investors. The Act could have far reaching implications for the commercial property sector. As a result, it is estimated that commercial landlords in England and Wales could face a £29 billion bill to bring their properties up to legal energy efficiency standards by 2018 (Estates Gazette 2014). Aside from the financial cost of upgrading properties, the regulations could have major implications on the ability of certain properties with low EPC ratings. This could ultimately impact on their value and intensify the possibility of obsolescence in the future. Accordingly, there is a risk that a poor rating may affect the investment value of a property asset. In light of this, EPC ratings are likely to be of increasing concern to property investors and it will be essential to gain an understanding of the energy performance of their stock. While the deadline may not be within some investors' investment time frames (Elliott *et al.* 2015), landlords should now be reviewing their property portfolios and, where necessary, considering options for improving energy efficiency ratings prior to the deadline or alternatively considering the disposal of poorly rated stock.

The Energy Act 2011 contains a number of implications for the UK commercial property sector. It is vital that landlords begin to gain an understanding of the energy performance



before a building is eligible under the Act. For the non-domestic sector the viability test is that the

property portfolios and the implications of in order to mitigate risk and protect asse

However, it is not clear how much progress has been made by the commercial sector in preparation for the aforementioned legislation or what effect such legislation is having on the sector. A qualitative industry study by Segro and CoreNet (2013) investigated the implications of the Act from the perspective of corporate occupiers. The findings generally revealed a low awareness of and little preparation made for the Act. Despite such study there is generally a lack of research in this area, particularly from the perspective of landlords. The purpose of the paper is therefore to investigate the implications of the Act, and assess how stakeholders, specifically commercial landlords and commercial property agents, are preparing for the Act. This will provide an indication of the impact that the legislation is having on key players in the commercial property sector.

## 2. METHODOLOGY

A quantitative framework, in the form of online structured questionnaire surveys, was utilised. Two complimentary surveys were created via Bristol Online Surveys (BOS), one for commercial landlords and one for commercial property agents. Landlords were chosen for the study since the Energy Act 2011 has the potential to have a particular impact on this group. Property agents were surveyed in addition to landlords in order to assess how advisers may be working with their clients with regard to the Act and this allowed for comparison between the views of different key stakeholders. While all research methods have their advantages and disadvantages, questionnaire surveys were deemed more suitable for this research since they offer a number of advantages that qualitative research methods do not possess (Cargan 2007). For example, questionnaires have the ability to gather larger amounts of standardised information across a broader geographical region in comparison to qualitative approaches and they allow for anonymity in responses, which may mean that respondents are more inclined to share their true practice and opinions.

The surveys consisted of background questions (see 3.1), followed by Likert-type scale statements concerning respondents' awareness of the Act, the nature of preparations undertaken for the Act (in relation to general management, investment and lease issues) (see Figs 1–5), and opinions on the impact of the legislation on the commercial prop-

The survey was distributed via e-mail to commercial agents and 200 commercial landlords of differing sizes and types, ranging from national organisations to local property agents across all regions of the UK. A stratified approach was adopted. Internet search engines and a commercial database were utilised to establish a list of commercial agents and landlords in all UK regions to which the survey link was e-mailed. Commercial landlords (21% response rate) and commercial agents participated in the surveys. 40 additional landlords and 10 additional agents viewed, but did not complete the survey. This may suggest that the survey was too detailed or potentially that respondents do not have enough knowledge of the Act to be able to complete the survey. The implication may be that the findings are more representative of organisations that have some interest in environmental themes.

The data was analysed using descriptive statistics in Excel to report frequencies and comparisons between agent and landlord responses to complementary survey questions.

## 3. RESULTS AND DISCUSSION

### 3.1. Background information

Respondents in both surveys were asked a series of background questions to establish the type of organisations (sectors) they dealt with, the letting strategy used, as well as the approximate value of their commercial property portfolios that they were involved in. See Supplementary Appendix A for a table summarising these results. The majority of landlords owned extremely valuable portfolios worth over £1 billion. 20% of landlords owned portfolios in the region of £1million to £100 million, 23% £100 million to £500 million and 13% owned portfolios with a value in the region of £500 million to £1 billion. Unfortunately, no landlords who owned smaller portfolios of less than £1 million. The authors hypothesise that this lack of participation from smaller landlords could be an indication that smaller organisations have a lack of awareness of the Act and have yet to make significant progress with regard to energy improvements. Accordingly, it must be noted that the results presented in the subsections are more representative of large organisations. These results were quite contrasting to those of commercial property agents, of whom the majority dealt with

erty sector (see Figs 6 and 7 in Supplementary material).

agents, of whom the majority dealt with under £1 million (39%) or between £1

£100 million (42%). Only 19% advised on portfolios worth over £100 million. With regards to the property types/sectors the parties dealt with, both landlords and agents identified that they were involved with a variety of commercial property. However, offices and retail were the dominant sectors in the landlords' portfolios. 97% of landlords were involved with office property and 87% with retail, yet fewer were involved with industrial (54%) and leisure property (49%). With regard to the agents, 71% were involved with office property, 74% with retail, 76% with industrial and, similar to landlords, fewer were involved with leisure property (48%). Furthermore, the overwhelming majority of both parties expressed that they owned/advised on properties with a mix of letting structures, including both single occupiers and multi let properties.

The landlords were asked a supplementary question concerning their "*Adoption of CSR in the ownership and management of the portfolio*"; 80% stated that they had adopted a CSR policy in relation to their property, whereas the remainder of the respondents either had not adopted such a policy (7%) or they did not know if they had one (13%). This can be considered with reference to the value of the property portfolios where the majority of landlords indicated possession of extremely valuable portfolios. This may suggest that this type of landlord is more likely to have an existing sustainability agenda, including a CSR policy.

### 3.2. Awareness of the Act

Respondents were asked about their '*level of awareness of the Energy Act 2011 and its implications around EPCs*' (see Supplementary Appendix B for a table illustrating these results). Although a subjective assessment, 69% of agents and 77% of landlords felt they had a '*good*' or '*very good*' awareness of the Act. The landlords demonstrated a higher degree of awareness than the agents. This point was reinforced by 31% of agents suggesting they had '*limited*' knowledge, compared to 23% of landlords. None of the participants suggested they were '*unaware*' of the Act. When agents were asked if they were '*aware of what property was exempt from the regulations*'; 44% said '*yes*', 48% stated that they '*did not have full awareness*' and 8% said they were '*not aware*'. Thus while many were aware of the Act, their knowledge of the details of the Act was not as high. Landlords were asked if they '*had any properties which were exempt from the regulations*'; 46% said '*yes*' 41% said

half of the properties are thought to be out Regulations. It would be interesting to further explore the nature of these properties and opinions are in fact correct. 13% of landlords '*not know*' if they had any properties that be exempt which could indicate insufficient information on the extent of the exemption asked if '*the requirements of the Energy Act in relation to the EPC regulations have been publicised*', 43% of landlords said '*yes*' while 20% of agents agreed. The majority of agents and 48% of landlords said '*no*', while 8% and respectively said they '*did not know*'. This indicates a slight divergence in awareness, agents seeming less well informed than landlords about the Act.

### 3.3. Implications of the Act

Having established the participants' awareness of the Act, the questioning focused on gathering the parties' perception of the potential implications that the Act could have on commercial property. A number of possible implications were posed (Fig. 1) and respondents were asked to rate the significance of each on a scale from one (being not significant) to five (most significant).

The results in Figure 1 indicate that 65% of landlords and 65% of agents felt that potential '*increased difficulties in selling or leasing properties with low EPC ratings after 2018*' posed a high level of significance; this issue received the overall rating of significance from both landlords and agents. Ultimately, if property is not able to achieve an appropriate EPC rating, landlords could be left with empty properties that would not achieve an income return, would incur empty rates liability, suffer from physical deterioration and also face the prospect of declining value. Conversely, 6% of agents thought that the issue was not significant, in contrast to all landlords who perceived it to be of at least some significance. This could be a reflection of the different perspectives for each party. For example, landlords, as owners, are likely to have more concern for financial aspects that relate to investment return and capital appreciation, whereas it is probable that agents will focus more on letting and marketing. It was also stressed in qualitative comments from a respondent that "a two tier market could emerge with regards to non-prime property". This has been highlighted in the literature (Reed et al. 2019; Hinnells et al. 2008) and

empt from the regulations, 10% said 'yes', 11% said 'no'. It is somewhat surprising to learn that nearly

WARRISON 2012). TIMMONS *et al.* (2000) and that, over long timescales, poor energy perfor-

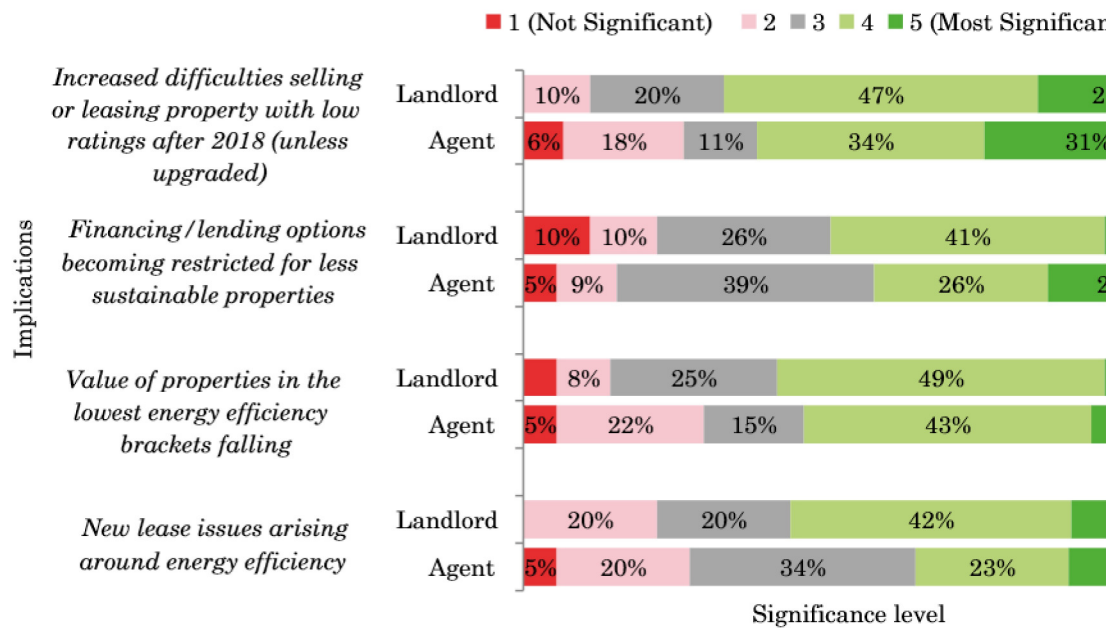


Fig. 1. Potential implications of the Act

is likely to affect the capital value of investment properties. There is an expectation amongst investors that poor energy performance will lead to “price chipping” during rental negotiations (Investment Property Forum 2007). This prospect is heightened by the MEES regulations discussed in this paper. Accordingly respondents were asked to consider the impact the Act may have on property values. Congruently, 62% of landlords and 58% of agents placed a high level of significance on the prospect of the ‘*value of properties in the lowest energy efficiency brackets falling*’ due to the Act. Although there is a developing body of research on the impact of sustainability on property values (Chegut *et al.* 2014; Eichholtz *et al.* 2010; Pivo, Fisher 2010; Fuerst, McAllister 2011; Fuerst *et al.* 2013), there are still no firmly established findings in the UK (Lown 2014). While price premiums for sustainable property may not be firmly established in the UK the results indicate that there is certainly a concern surrounding the potential for the value of inefficient properties to fall in the near future. Theoretically, if a property fails to reach the required EPC rating by 2018 it could be regarded as having reduced rental value as it could not be legally let until energy efficiency improvements are made; this may then begin to provide evidence of a decline in property values due to sustainability. When valuing property with low EPC ratings, the valuation may have to allow for the cost of improvements if works are likely to be pursued at the property.

up to the required standard has been 1. Landlords and agents held quite concerns concerning the potential for ‘*financing options becoming restricted for less sustainable property*’; 54% of landlords and 48% felt this was a highly significant prospect. Landlords and fewer agents, 5%, considered this area to be of no significance to their portfolios. Industry research suggests commercial property lenders have a lack of understanding of the potential implications of the Act 2011 (Cushman, Wakefield 2013). This explains why the parties’ concern for this was not more significant. However, recent research suggests that some banks are already considering EPC ratings before lending and, where the cost estimates to improve the EPC rating are high (Fuerst *et al.* 2015). This was echoed by one respondent in this study who commented that “a lender will not necessarily decline the opportunity to lend against a non-compliant property but probably require the borrower to demonstrate the upgrade proposed on the property and make it a condition of the loan”.

It is also likely that the Act will impact on the relationship between landlord and tenant and the drafting of commercial leases. The standard commercial lease is particularly in multi-tenanted buildings and is generally perceived as a barrier to environmental improvement (Langley, Stevenson 2007). The rigidity of traditional leases and the relative inflexibility of the Act may lead to a re-evaluation of lease structures.



Property owners and investors may find that lenders begin asking about the energy efficiency of property and whether the cost of bringing property

term nature of a tenant's interest generates that neither landlord nor tenant has

incentive to reduce energy consumption (Hinnells *et al.* 2008). Accordingly, respondents were probed on their views with regard to ‘*new leasing issues arising around energy efficiency*’; 60% of landlords, but fewer agents (42%), felt that this prospect was highly significant (Fig. 1). The lower level of significance by agents is somewhat surprising given that they are heavily involved in letting and negotiating leases. Furthermore, it was suggested by agents that lease issues will vary for the different market sectors. For example, one agent suggested that “industrial leases may have few green covenants due to having no heating in units or limited insulation, yet office leases might be quite extensive on energy efficiency covenants”. Potential lease issues are considered in more depth in Figure 2.

### 3.4. Impact of the Act on commercial lease provisions

Even in buildings designed for high environmental performance, the manner in which they are occupied and used will significantly affect their environmental performance. For commercial investment property the leasehold relationship, in part, will have a significant impact on the occupation and use of the property. As well as ignoring environmental performance, Hinnells *et al.* (2008) posit that in many respects traditional commercial leases can actually hinder environmental improvements being made. It is therefore suggested that leases need to be adapted to provide a structure that supports buildings being used and operated in an environmentally efficient way (Hinnells *et al.* 2008). The relationship between landlord and tenant will thus need to change in order to progress with regards to the energy performance of buildings and sustainability in general. Accordingly, the respondents were asked about their perception of how significant, on a scale of one (not significant) to five (most significant), the Act will be with regard to a number of lease provisions after 2018 (Fig. 2).

Generally dilapidations provisions require tenants to reinstate premises to their former condition at the end of a lease. This is seen to discourage tenants from making energy efficient upgrades (Hinnells *et al.* 2008). Consequently, it is anticipated that the Act will have an impact on this issue. In conformity between parties, the results indicate that 66% of landlords and 62% of agents considered the Act would likely have a highly significant

have a highly significant impact on ‘*reinst at lease end*’. As sustainability become prominent on landlords’ agendas, some may find that they will be released from traditional lease obligation to reinstate the premises at lease end if the landlord considers it unnecessary or unsustainable. In terms of alterations the environmental impact of tenant modifications is not traditionally taken into consideration. It is anticipated that this is likely to change with the Act and the sustainability agenda in general. The results indicate that landlords placed higher significance on the potential impact of the Act to impact on tenant’s improvements and alterations in comparison to agents; 47% of agents perceived ‘*tenant’s alterations*’ to be of high significance in comparison to 66% of landlords. Similarly, 47% of agents perceived ‘*tenant’s improvements*’ to be of high significance in comparison to landlords. This divergence may be due to landlords being more closely involved in negotiating improvements and alterations given that they must consider the impact of such works on the marketability and any damage to their reputation that may occur. Landlords may begin to consider the nature of the improvements and alterations so that any work does not diminish the value of the property. Lease clauses could provide that it is deemed reasonable for the landlord to refuse consent if alterations would have a negative impact on the energy performance of a building (Hinnells *et al.* 2008).

Standard lease clauses are unlikely to encourage landlords to pass on the costs of environmental improvements through a service charge (Hinnells *et al.* 2008). Accordingly, for multi-let properties this is expected to be an area that may change. Both parties’ views were parallel and inconclusive in relation to the likely impact of the Act on ‘*service charge provisions*’ after 2018; 55% of landlords and 58% of agents felt that this was a highly significant issue (Fig. 2). It was also noted that both parties felt the impact of the Act would be less significant on ‘rent reviews’, ‘consent to assign’ and ‘consent to sublet’ compared to the aforementioned lease covenants which relate to the physical fabric of the property. In particular, agents placed a much lower level of significance on ‘consent to assign’ and ‘consent to sublet’ in comparison to landlords. 47% of landlords considered the impact of the Act on ‘consent to assign’ to be highly significant and 51% felt the same for ‘consent to sublet’.

impact on '*dilapidations*' post 2018. Similarly, 65% of landlords and 63% of agents felt the Act would

'consent to sublet'. This can be contrasted with fewer agents, 21.5% and 19% respectively.

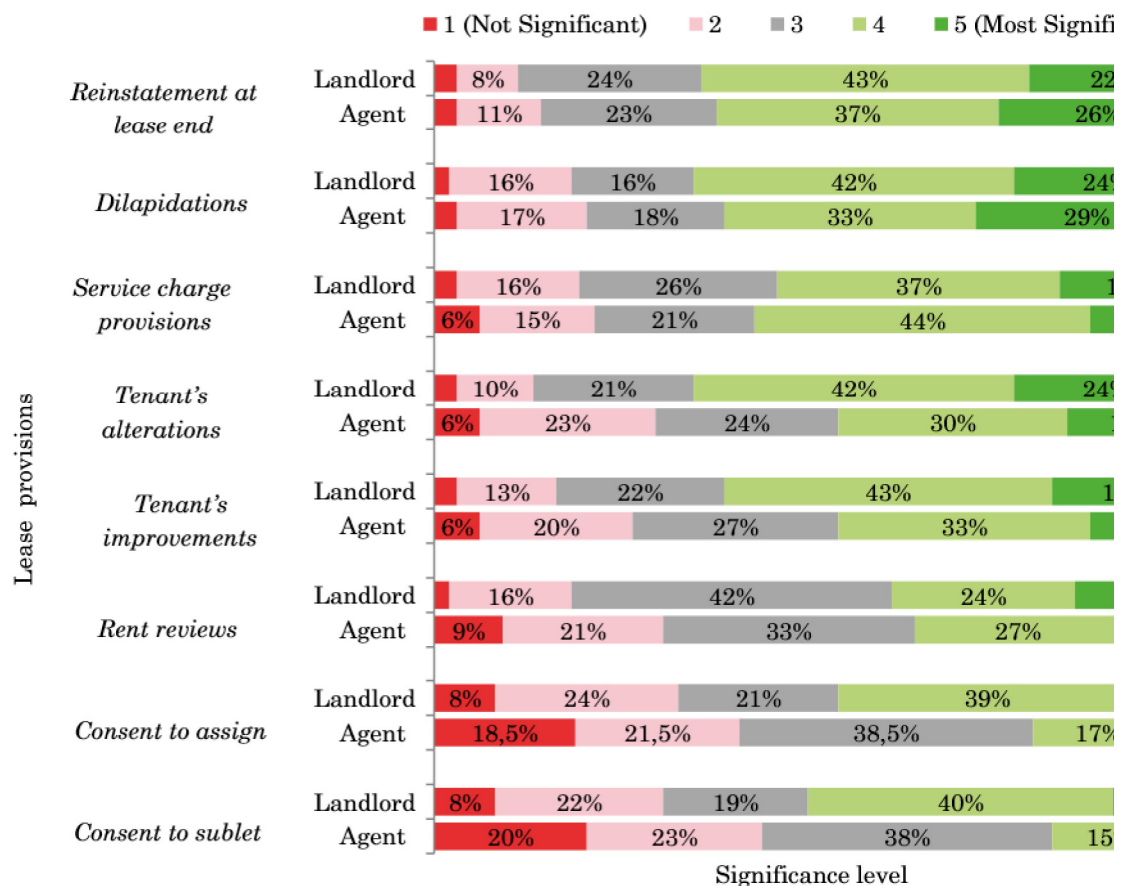


Fig. 2. Impact of the Act on lease provisions

is likely to impact on rent review provisions since they proceed on the basis of a hypothetical letting of the premises with vacant possession, which will require an EPC of an E rating or higher (if no exemptions apply) come 2018. Even though an existing lease may not currently be in breach of the Act, it may be assumed for the purposes of the rent review it will become unlawful to let the premises once the Act is implemented in 2018. This could impact on a tenant's ability to assign or sublet the premises after 2018 and, therefore, may affect the rental value. However, only 40% of landlords and 37% of agents felt that the Act would have a highly significant impact on 'rent reviews'. For landlords this was the lease issue that they felt was least significant with regard to the Act's impact after 2018. The influence of the Act will ultimately depend upon on the wording of the rent review clause, including what is to be assumed and disregarded.

Overall the results in Figure 2 indicate that, in terms of lease provisions relating to the physical aspect of the property (improvements, alterations and dilapidations), the parties felt that the Act

to be less of an issue currently for both in comparison to the financial implications from the more physical lease terms.

### 3.5. Potential preparations for the management and investment decisions

After gathering perceptions on the impact of the Act, the survey focused on understanding parties' perception of how the commercial property could prepare for the implementation of the Act in 2018. Respondents were asked to rate a list of 'actions' that could be undertaken in preparation for 2018 on a scale of importance from one (not important) to five (most important) (Fig. 3). The results demonstrate that for both landlords, 'proactively thinking about improving energy efficiency when repairing, upgrading property or doing routine maintenance' was as the most important activity in preparation for 2018; 82% of landlords thought that it was highly important, as did 76% of agents. Overall, this activity was ranked in second place by agents who gave slightly higher

could have serious implications. The contractual relationship between landlord and tenant appears

*'building in costs of necessary statutory  
under the Act when buying new property*

priority for agents and fourth for landlords was *'putting an energy efficiency plan in place where the EPC rating is F or G'*; 74.5% of landlords and 71% of agents considered that this was of high importance in preparation for 2018. Despite previous research suggesting that poor rated EPCs do not adversely impact on the buying and selling process (Elliott *et al.* 2015), 79% of landlords and 65% of agents in this study considered that it was highly important to *'consider the requirements of the Act and EPC ratings when buying or advising on new investments'*. This demonstrates that many landlords, in particular, appear to be seeking to safeguard the future of their portfolio by ensuring that future property acquired will be Act compliant where possible. The results in Figure 3 illustrate that both parties were fairly congruent in terms of their opinion of the importance of using or consulting EPC ratings to assess property. However, there needs to be an element of caution when using EPC ratings because they only indicate an asset's theoretical energy efficiency, rather than actual energy consumption (JLL and BBP 2012). In reality a building's actual energy consumption will be highly influenced by the occupier, despite its design intent. A number of landlords and agents in this survey commented on the usefulness of EPC recommendations and suggested, for example, that "EPCs are usually weak in content and not robust enough to base investment decisions on". It was recommended by one respondent that "a more detailed EPC rating report is required which will provide sufficient depth for decision making", while another stressed that "a different reporting system should be developed for this legislation". Display Energy Certificates (DECs), which are mandatory for public sector buildings, are generally perceived to be of more value since they focus on actual energy consumption. One respondent also commented on inaccuracies in assessments, suggesting that "two assessors undertaking an EPC assessment on the same building can arrive at different assessments". Concern over the limitations and potential for inaccuracies in EPCs is also highlighted in the literature (Elliott *et al.* 2015; Lown 2014). An additional issue is that EPCs are valid for 10 years. Thus, Lown (2014) suggests that when a building was last certified, along with the quality of the data input at the time, can have a detrimental effect on EPC ratings. Accordingly, the reliability of exiting EPCs should be questioned,

The parties diverged in opinion with regard to *'undertaking cost-benefit appraisals to assess the financial implications of upgrading buildings or developing a renovation/disposal strategy'*; 67% of landlords considered this action was highly important while only 42% of agents held the same view. This reinforces the observation that landlords are placing more emphasis on considering the longer term financial implications of the regulations than agents. In addition, more landlords (64%) than agents (53%) felt that it was highly important to *'take advantage of voids to make energy efficiency improvements prior to 2018'*. Both parties placed lower importance on the *'use of an asset management strategy to improve operational performance'*; 54% of landlords and 42% of agents felt that this activity was highly important. Similarly, *'considering alternative use or disposal for unsuitable properties'* was rated lower than many other actions; around half of the respondents (49% of landlords and 52% of agents) considered this action to be of high importance.

### 3.6. Current preparations: management and investment

The survey subsequently sought to understand the landlords' current level of preparation for the Act (such questions were thus excluded from the agent survey). To gain an understanding of the extent of risk posed by the Act, landlords were asked to indicate the extent to which they need to gain a full picture of the energy performance of their stock. Accordingly, landlords were asked if they had *'already undertaken EPC assessments on their stock'*; the majority (85%) had undertaken EPC assessments on *'all or most of their stock'*, 18% had undertaken assessments on *'small minority of stock'*, while no respondent indicated that they had *'not acted on EPCs'*. Having considered the respondents' views on the importance of various actions which could be undertaken in preparation for the Act (see Figure 4), landlords were then asked to indicate which of these 'actions' they were already *'currently engaged in'*. The respondents were asked to indicate whether they were currently engaging in activity on either: 1) 'all of their stock', 2) 'most of their stock', 3) 'no stock yet, but will be so in the near future' or 4) 'not on any stock' (see Supplementary Appendix C for a visual representation of the results). The majority of landlords (85%) were already *'proactively thinking*



particularly if they are being used to base investment decisions on.

*improving energy performance when re-upgrading, altering or during routine*

## Preparation for the Energy Act 2011 and minimum energy efficiency standards in UK commercial property

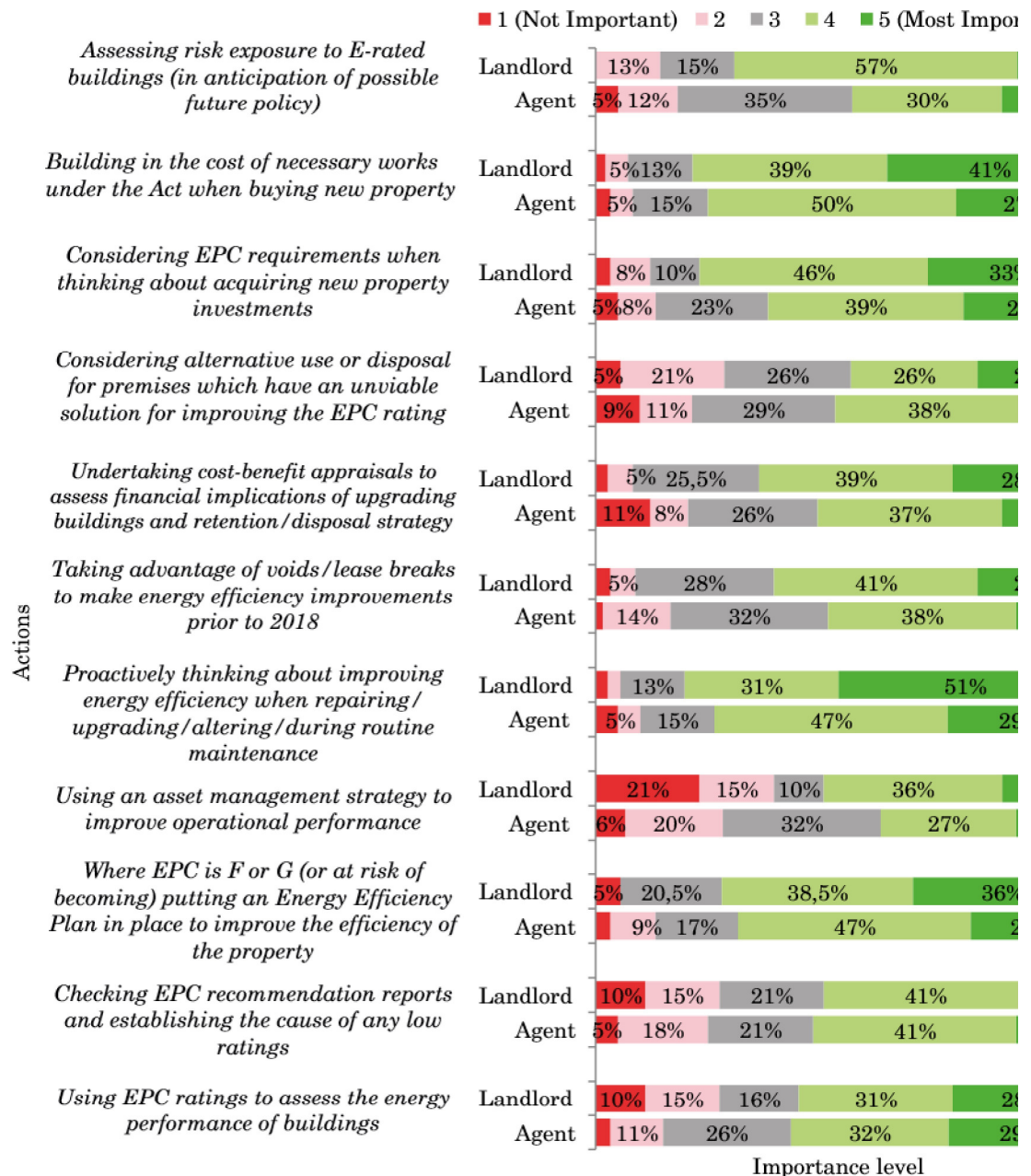


Fig. 3. Potential actions in preparation for the Act

nance' for either all or some of their stock. This action was also prioritised as most important by landlords in Figure 3. Given that many respondents were fairly contemptuous regarding the reliability and quality of EPCs, the results indicate that 'using EPCs to assess the energy performance of buildings' was an action that many of the landlords were currently engaged in, with 77% having done this for at least some or all of their stock. 74% of landlords were currently 'considering the requirements of the Act with regards to EPC ratings when thinking about acquiring new

of any low ratings' on all or some of their stock. The data therefore suggests that the landlords are actively involved, to some extent, in assessing EPC ratings due to the fact that they are anecdotal signs in the marketplace that capital expenditure necessary to improve a property's EPC rating is being factored into investment appraisals (Lown 2014). This was done by 65% of landlords in this study who were already 'building in the cost of necessary statutory works under the Act when buying new property' (for all or some of their

*property*'. A further 72% were already '*checking EPC recommendations and establishing the cause*

further 15% were considering doing so future. Despite being considered less

than other actions (Fig. 3), 60% of landlords were currently *'using an asset management strategy to improve operational performance'* and *'taking advantage of voids or lease breaks to make energy efficiency improvements prior to the legislation coming into effect'* (for some or all of their stock). 59% of landlords had also *'put an energy efficiency plan in place to improve the efficiency of property where the EPC was F or G (or at risk)'*. A further 57% of landlords were actively *'assessing risk exposure to 'E' rated buildings (in anticipation of possible future direction of Government policy)'* for some or all of their stock. This demonstrates that there is a degree of uncertainty around the Act, specifically the MEES becoming more stringent. In addition, 53% of landlords suggested they currently *'undertake cost-benefit appraisals to assess the financial implications of upgrading buildings'* for some or all of their stock. A further 27% of landlords were considering doing so in the near future. Elliott *et al.* (2015) also found that, when buying commercial property, investors are particularly concerned with understanding the likely cost of bringing property up to the required E rating. Only 35% of landlords had *'considered alternative use or disposal for premises which have an unviable solution for improving the EPC rating'*, while 45% had not yet considered this option for any stock. It is clear from the results that the vast majority of landlords are actively engaged in some aspect of activity on all or some of their stock in preparation for the 2018 deadline. These actions include risk planning, energy saving assessments and a formal management approach required to improve EPC ratings on their stock.

### 3.7. Current preparations: lease provisions

Landlords and agents were subsequently requested to indicate their level of preparation and engagement with a number of 'actions' specifically related to leasing practice (Fig. 4). Landlords were asked to indicate what *'actions they were currently engaging in'*, while agents were asked to indicate what *'actions they were currently advising their clients to engage in'* as preparation for the implementation of the Act in 2018. For each action respondents could indicate one of the following engagement levels: 'yes' (currently engaged in); 'no' (not engaged in); or 'no not engaged in, but will be doing so in the near future'.

The results suggest that landlords were most actively involved in *'encouraging tenants to use*

ready do this currently, but fewer agents were advising clients on this. This is in line with Figure 3 where landlords suggested that this was an important action in preparation for the Act, *'proactively thinking about improving energy efficiency when repairing, upgrading, altering or carrying out routine maintenance'*. The results of this survey also indicate that the Act has had some influence on green leasing activity. While there has been much discourse around the topic of green leasing at international scale (Christensen, Dunca, Hinnells *et al.* 2008; Oberle, Sloboda 2010), there is little evidence as to what is happening in the UK marketplace (Roussac, Bright 2012). The results appear to demonstrate that landlords have been more proactive than agents with regard to green leases; 38% already *'incorporate green considerations into new leases'* while 44% intend to do so in the near future. In contrast, only 12% of agents were currently engaged in this, with a further 27% intending to do so in the near future. However, agents were not necessarily ignoring the potential need for changes. Figure 4 reveals that 18% of agents were currently advising on the *'introduction of provisions into service charges to cover for additional costs relating to environmental work'*, while 20% had begun *'making amendments to existing leases to satisfy the requirements of the Act'*. Landlords indicated a higher degree of engagement with such activities. Overall, 74% of landlords were currently (28%) or considering *'making amendments to existing leases to satisfy the requirements of the Act'*.

Both parties were participating to a similar degree in the insertion of lease clauses relating to the maintenance of a certain EPC rating. 28% of landlords and 18% of agents were currently engaged in *'reinstatement clauses that require a tenant to return a property with the same EPC rating as at lease outset'*, with a further 28% of landlords and 40%, respectively, considering doing so in the near future. Correspondingly, 18% of landlords and 12% of agents had begun *'inserting lease clauses that penalise a tenant if they do not maintain a minimum EPC rating at a specific level'*. More agents (23%) than landlords (15%) had already begun advising on the *'inclusion of a service charge clause in the lease to allow the landlord to recover some costs of fit-out or works necessary to comply with the Act'*. Overall, 38% of landlords and 17% of tenants were currently engaged in *'incorporating disregards in to rent reviews'*, but a further 54% of landlords and

*energy efficient materials and technology when undertaking any works*’, 41% suggested they al-

agents were considering this for the future. A small number of the participants, 3% of landlords a

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